

STATE HOUSING APPEALS BOARD

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STATE HOUSING APPEALS BOARD

MINUTES OF SEPTEMBER 20, 2004 MEETING

On September 20, 2004, the State Housing Appeals Board ("SHAB") convened a hearing at 2:00 p.m. at East Providence City Hall to address the agenda items delineated below. The following SHAB members were present: Judge Stephen Erickson (Chair), Richard Godfrey, Jr., Donald Goodrich, Charles Maynard, John O'Brien, Steven Ostiguy and Dr. Isadore Ramos. Steven M. Richard was present as SHAB's counsel, and Christine DaRocha of Rhode Island Housing was present to provide staff support.

Omni Development Corp. v. Town of Coventry Zoning Board of Review

SHAB Appeal No. 2001-1

Scott Spear, counsel for Omni Development Corporation, noted that

the original zoning board decision imposed a one-year conditional approval of the comprehensive permit. As the parties move forward to implement their settlement of the matter, there was some uncertainty whether that time limitation remained in place. Mr. Spear represented that the developer and the Town have resolved any ambiguities regarding the timing issues to obtain a building permit. Consequently, there was no need for SHAB's action in this matter.

Deer Brook Development Corporation v. Town of Exeter Zoning Board of Review,

SHAB Appeal No. 2004-1

SHAB heard oral arguments on the appeal of Deer Brook Development Corporation ("Deer Brook") challenging the decision of the Town of Exeter Zoning Board of Review ("Exeter ZBR") dated January 21, 2004, which denied Deer Brook's Application for a Comprehensive Permit Pursuant to R.I.G.L. § 45-53-1 et seq. ("Application"). Attorney Scott Spear argued on behalf of Deer Brook, and Stephen Brouilliard argued on behalf of the Exeter ZBR. The full transcript of the oral arguments is maintained by SHAB and is a public record available upon request.

After the completion of oral arguments, SHAB made the following findings of fact, which passed unanimously:

- The Exeter ZBR did not evaluate fully and reasonably the health and safety issues relating to Deer Brook's proposed project. Particularly, the ZBR improperly dismissed in a summary manner the expert testimony presented by the applicant. (Transcript at 99-104).

- The Town of Exeter has not applied the local zoning ordinances equally to subsidized housing applications and non-subsidized applications. (Id.).
- Deer Brook submitted sufficient documentation and competent expert testimony, which was equivalent to a master plan level proposal. (Id. at 105-08).
- The Exeter ZBR improperly rejected the expert testimony of Daniel Varin that Deer Brook's proposed project is in conformance with the Exeter Comprehensive Plan. (Id. at 108-12).
- The Town of Exeter has not achieved the ten percent (10%) minimum threshold prescribed by the Low and Moderate Income Housing Act, nor does it have an approved plan in place to meet that threshold. The Town has not made significant progress to achieve the threshold. (Id. at 112-14).
- The Exeter ZBR incorrectly and unreasonably imposed a burden on Deer Brook to provide financial information, which is not required under the Low and Moderate Income Housing Act. (Id. at 115-17).
- The record evidence clearly shows that the Exeter ZBR engaged in disparate treatment of Deer Brook's Application and imposed unreasonable evidentiary burdens upon the developer. (Id. at 117-19).
- Deer Brook sufficiently specified and supported its requested exceptions and waivers to obtain the Exeter ZBR's approval of the Application at the comprehensive permit level, subject to any reasonable conditions that the Exeter ZBR may have deemed necessary for further review and additional evidentiary support at later stages of the approval process. (Id. at 119-20).

Based on the above-findings of fact, SHAB voted unanimously to (1) vacate the decision of the Exeter ZBR, (2) remand the Application for the issuance of a comprehensive permit with the approval of the twenty-one (21) exceptions delineated in the November 17, 2003 letter of Scott Millar, Chairman of the Exeter Planning Board, (3) require that Deer Brook must obtain all required federal, state or local approvals as the development of its project progresses and (4) retain jurisdiction over this matter as necessary to resolve any subsequent disputes between Deer Brook and the Exeter ZBR. (Id. at 121-22). Judge Stephen Erickson, Richard Godfrey, Jr., Donald Goodrich, Charles Maynard, John O'Brien, Steven Ostiguy and Dr. Isadore Ramos voted in the affirmative.

Administrative Matters

Following the completion of the Deer Brook appeal, SHAB briefly discussed scheduling issues. SHAB set a hearing date of October 12, 2004 to hear the appeal of East Bay v. The Zoning Board of Review of the Town of Barrington. SHAB also scheduled a hearing date of October 25, 2004 to hear the appeals of Agostenelli v. The Zoning Board of Review of the Town of Narragansett and Spectrum Properties, Inc. v. The Zoning Board of Review of the Town of Coventry.

Mr. Goodrich moved to adjourn, which Mr. Maynard seconded. The motion passed unanimously. SHAB adjourned its meeting at 4:31

p.m.

Respectfully submitted,

Judge Stephen P. Erickson
Chair

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